

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Pio German Espinal,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:05cv812
vs.	:	
	:	District Judge Susan J. Dlott
Warden, Noble Correctional Institution,	:	
	:	
Respondent(s).	:	

ORDER

The Court has reviewed the Report and Recommendations of United States Magistrate Judge Timothy S. Hogan filed on April 9, 2007(Doc. 11), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired April 27, 2007, hereby ADOPTS said Report and Recommendations.

Accordingly, Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) is **DENIED** with prejudice.

A certificate of appealability will not issue with respect to claims for relief which this Court has concluded are barred from review on procedural waiver grounds, because under the first prong of the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), "jurists of reason" would not find it debatable whether the Court is correct in its procedural rulings.

A certificate also will not issue with respect to claims for relief that were addressed on the merits herein, because petitioner has not made a substantial showing that he has stated a "viable claim of the denial of a constitutional right" that is "adequate to deserve encouragement

to proceed further.” *See Slack*, 529 U.S. at 475 (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983); *see also* 28 U.S.C. § 2253 (c); Fed. R. App. P. 22(b)).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting this Report and Recommendation will not be taken in “good faith,” and, therefore, **DENY** petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott
United States District Judge